

Message Text

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PAGE 01 TOKYO 09758 252255Z

61/12

ACTION EA-14

INFO OCT-01 ISO-00 CIAE-00 NSAE-00 NSCE-00 SSO-00 USIE-00

INRE-00 PM-07 H-03 INR-11 L-03 NSC-07 PA-04 RSC-01

PRS-01 SP-03 SS-20 SCA-01 DRC-01 /077 W

----- 124170

O R 251000Z JUL 74

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC IMMEDIATE 3539

INFO COMUSJAPAN FUCHU JA

5TH AF FUCHU JA

CINCPAC HONOLULU HI

CINCPACAF HICKAM AFB HI

313TH AD KADENA AB OKINAWA

AOCONSUL NAHA 1542

SECDEF WASHDC

CSAF WASHDC

C O N F I D E N T I A L TOKYO 9758

C O R R E C T E D C O P Y -- PARAS THREE AND FOUR --

CINCPAC FOR POLAD

E.O. 11652: GDS

TAGS: MARR PFOR JA

SUBJ: IE SHIMA INCIDENT

REF: A. STATE 161360 (NOTAL) B. CSAF 241928Z JULY 74 TO 5TH AF (NOTAL
)

SUMMARY: EMBASSY SUBMITS COMMENTS ON REPERCUSSIONS EXPECTED IN
JAPAN IF DECISION IS SUSTAINED TO REVERSE CDR 5TH AF DETERMINATION
NOT TO ISSUE OFFICIAL DUTY CERTIFICATE IN IE SHIMA RANGE INCIDENT.
IN ADDITION TO PREDICTABLE RESURGENCE OF GENERAL PUBLIC AGITATION,
WE EXPECT GOJ WOULD CONTEST EFFORT TO WITHDRAW JURISDICTION FROM
JAPANESE SIDE. WE CONCUR IN CDR 5TH AF DECISION NOT TO ISSUE
DUTY CERTIFICATE BECAUSE, BASED ON FACTS AND LEGAL OPINION PRESEN-
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PAGE 02 TOKYO 09758 252255Z

TED TO US BY MILITARY AUTHORITIES, WE DO NOT JUDGE CLEAR AND

SOLID ARGUMENT COULD BE SUPPORTED IN FACE OF JAPANESE PUBLIC
OPINION AND GOJ CONTEST OF ISSUE. END SUMMARY.

1. EMBASSY HAS RECEIVED COPY OF REF B DIRECTING CDR 5TH AF TO ISSUE
DUTY CERTIFICATE IN FCJ CASES, SGTS CARROLL E. LOCKE AND HAROLD
W. JOHNSON, WHO WERE INVOLVED IN INCIDENT AT USAF RANGE ON IE
SHIMA, OKINAWA PREFECTURE ON JULY 10. EFFECT OF THIS INSTRUCTION
WOULD BE TO REVERSE DECISION OF CDR 5TH AF NOT TO ISSUE DUTY CERTI-
FICATE AND INSTITUTE CLAIM TO U.S. PRIMARY JURISDICTION IN CASE.
ALL ACTION BEING HELD IN ABEYANCE PER REF A.

2. DEPARTMENT NO DOUBT IS AWARE THAT, AS RESULT OF DETERMINATION
OF CDR 5TH AF THAT OFFICIAL DUTY CERTIFICATE SHOULD NOT BE ISSUED,
NUMBER OF DEVELOPMENTS HAVE ALREADY CARRIED CASE TOWARD EXERCISE OF
JAPANESE JURISDICTION. DEVELOPMENTS, MOREOVER, HAVE BEEN IN
PUBLIC REALM: (A) DECISION THAT OFFICIAL DUTY CERTIFICATE WOULD NOT
BE ISSUED IN CASE WAS ROUTINELY INFORMED TO OFFICE OF PUBLIC
PROCURATOR IN OKINAWA, IN ACCORDANCE WITH LONG ESTABLISHED PRO-
CEDURES UNDER THE SOFA; (B) CDR 313TH AD KADENA JULY 22
ADDRESSED A LETTER TO GOVERNOR YARA OF OKINAWA PREFECTURE,
REBUTTING LEFTIST DISTORTIONS OF CASE BUT INFORMING YARA THAT GOJ
WOULD EXERCISE JURISDICTION IN CASE; (C) U.S. DECISION AND
DISCUSSION OF CASE IN LETTER TO YARA HAVE BEEN GIVEN FULL
COVERAGE IN JAPANESE AND ENGLISH PRESS WITHIN JAPAN; (D) SEVERAL
PROTEST DELEGATIONS CALLING ON CONSUL GENERAL AT NAHA SINCE
ANNOUNCEMENT OF U.S. DECISION HAVE BEEN ASSURED THAT JURISDICTION
WOULD BE EXERCISED BY JAPAN; AND (E) WHILE AIRMEN IN QUESTION
REMAIN IN U.S. CUSTODY UNTIL FORMAL INDICTMENT BY JAPANESE
GOVERNMENT, THEY HAVE BEEN MADE AVAILABLE TO JAPANESE AUTHORITIES
IN COURSE OF INVESTIGATION BY POLICE UNDERTAKEN ON ASSUMPTION
THAT JAPAN WILL EXERCISE JURISDICTION.

3. IN LIGHT OF DEVELOPMENTS IN CASE THUS FAR, REVERSAL OF
DECISION ON ISSUANCE OF DUTY CERTIFICATE IS CERTAIN TO PROVOKE STRONG
ADVERSE REACTION. OPPOSITION ELEMENTS HAVE FROM OUTSET PLACED
MORE EMPHASIS ON CASE THAN WOULD SEEM JUSTIFIED IN TERMS OF INJURY
DONE OR NUMBERS OF GENERAL POPULACE AFFECTED. LEFTISTS ARE OF COURSE
HUNGRY FOR CAUSE CELEBRE WITH WHICH TO BELABOR CONSERVATIVE
GOVERNMENT. PUBLICITY ALREADY GIVEN TO OUR DIFFICULTIES OVER USE
OF IE SHIMA RANGE IN RELATION TO EXPO PLANNING, COMBINED WITH
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PAGE 03 TOKYO 09758 252255Z

RECEPTIVE ENVIRONMENT IN OKINAWA GENERALLY AND ACTIVE AGITATION
OF REFORMIST PREFECTURAL GOVERNMENT, ENHANCES OPPOSITION POSSIBILI-
TIES IN THIS CASE.

4. CONSUL GENERAL NAHA HAS REPORTED THAT, WHILE HE HAS RECEIVED
UNUSUAL NUMBER OF PROTESTS CONCERNING INCIDENT, JURISDICTIONAL
DECISION LAST WEEK-END APPEARED TO REMOVE SOME INTENSITY FROM
PUBLIC OPPOSITION AND OFFERED POSSIBILITY INCIDENT WOULD GRADUALLY

SIMMER DOWN WITHOUT DIRECTLY ENDANGERING OUR CAPABILITY TO RETAIN USE OF RANGE. IF JURISDICTIONAL DECISION IS REVERSED, HE ESTIMATES THAT IT IS ENTIRELY POSSIBLE THAT WE WILL BE CONFRONTED WITH SIT-DOWNS ON RANGE PROPERTY AND OTHER AGITATION THAT WILL MAKE DIFFICULT GOJ SUPPORT OF OUR CONTINUED USE OF RANGE.

5. THERE IS NO NEED TO DOCUMENT PROGRESSIVE RISE IN GOJ SENSE OF VULNERABILITY UNDER OPPOSITION PRESSURE OF THIS KIND. EVEN WITHOUT AN IMMEDIATE SUBSTANTIVE DIET SESSION TO WORRY ABOUT, THE WEAKENED TANAKA GOVERNMENT CONTINUES TO MANIFEST SERIOUS NERVOUSNESS ABOUT THE POLITICAL POTENTIAL IN SUCH PROBLEMS. BEFORE CDT 5TH AF TOOK HIS JURISDICTIONAL DECISION LAST WEEKEND, FONOFF EXPRESSED CONCERN TO US INFORMALLY ON SEVERAL OCCASIONS. SPECIFICALLY, AMERICAN AFFAIRS DIRGEN YAMAZAKI RAISED PROBLEM AND ON JULY 17 UNDER INSTRUCTIONS EXPRESSED CONCERN FOR THE RECORD ABOUT JURISDICTIONAL DETERMINATION. BASED ON PREVIOUS DISCUSSIONS WITH FONOFF, WE BELIEVE IT IS PROBABLE THAT GOJ WOULD CONTEST ANY DECISION TO WITHDRAW CESSION OF PRIMARY JURISDICTION TO JAPAN, FIRST IN JOINT COMMITTEE AND THEN AT POLITICAL LEVEL. THEY ARE ALL TOO CONSCIOUS OF HISTORY OF JURISDICTIONAL ASPECTS OF GIRARD CASE IN 1957-58.

6. THE EMBASSY IS NOT COMPETENT TO JUDGE LEGAL MERITS OF JURISDICTIONAL QUESTION. WE PREVIOUSLY HAD ADVISED CDR 5TH AF THAT IF LAW REQUIRED DECISION TO ISSUE DUTY CERTIFICATE AND PREEMPT JURISDICTION FOR THE U.S., WE MUST BE PREPARED WITH CLEAR AND SOLID ARGUMENTS IN SUPPORT OF IT BECAUSE GOJ WAS LIKELY TO CONTEST SUCH DECISION. BASED ON FACTS AND LEGAL OPINION AS PRESENTED TO US AFTER INVESTIGATION BY U.S. MILITARY AUTHORITIES, WE CONCLUDED THAT SUCH A CLEAR-CUT CASE COULD NOT BE MADE. WE THEREFORE CONCURRED IN THE DECISION REACHED BY CDR 5TH AF ON BASIS OF FACTS KNOWN TO HIM AND BEST AVAILABLE ADVICE ON THE CASE.

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PAGE 04 TOKYO 09758 252255Z

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Message Attributes

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